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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TESLA, INC.,

Case No. 5:24-cv-03615-EJD

Plaintiff.

V

MATTHEWS INTERNATIONAL
CORPORATION, a Pennsylvania corporation,

Defendant

TESLA, INC.'S OPPOSITION TO MATTHEWS' MOTION TO COMPEL ARBITRATION

Date: October 3, 2024

Time: 9:00 a.m.

Place: Courtroom 4, 5th Floor

Judge: Hon. Edward J. Davila

■ REDACTED DOCUMENT SOUGHT TO BE SEALED

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Citation	Description
Dkt. 17-6, Ex. 1	[REDACTED]
Dkt. 17-5	CONFIDENTIAL Declaration of Gregory Babe, Matthews' CTO
Eggleston Decl.	CONFIDENTIAL Declaration of Dr. Bonne Eggleston; Tesla's Senior Director of 4680 (filed herewith)
Exhibit 1 ¹	CONFIDENTIAL Email fr. Greg Babe, Matthews, to Roshan Shankar, Tesla (Feb. 12, 2021, attachment omitted)
Dkt. 17-5, Ex. 6	CONFIDENTIAL Letter fr. Bonne Eggleston, Tesla, to Joseph Bartolacci & Greg Babe, Matthews (Nov. 10, 2023)
Exhibit 2	[REDACTED]
Dkt. 6-3	CONFIDENTIAL Tesla-Matthews NDA (effective April 1, 2019)
Dkt. 6-4	CONFIDENTIAL Tesla-Matthews NDA (effective July 1, 2019) (see also Dkt. 17-5, Ex. 3)
Dkt. 6-5	CONFIDENTIAL Tesla-Matthews NDA (effective March 14, 2022) (see also Dkt. 17-5, Ex. 5)
Dkt. 17-5, Ex. 2	[REDACTED]
Dkt. 17-5, Ex. 4	[REDACTED]
Dkt. 17-5, Ex. 1	[REDACTED]

TABLE OF ABBREVIATIONS

Abbreviation	Meaning
DBE	Dry Battery Electrode, i.e., manufacture of electrodes for lithium-ion batteries with greatly reduced use of solvents and slurries
[REDACTED]	[REDACTED]
NDAs	Tesla-Matthews NDAs (i.e., Dkts. 6-3, 6-4, 6-5, 17-5 Ex. 2)

¹ Exhibits 1 and 2 are attached to the Declaration of Robert Courtney, filed herewith.

1 **I. COUNTER-STATEMENT OF THE ISSUES TO BE DECIDED**

2 1. Do the Tesla-Matthews NDAs (executed in 2019 and 2022), which lay out the
 3 parties' confidentiality obligations and which identify this Court as a forum for resolving disputes
 4 related thereto, control review of Matthews' request for arbitration?

5 2. If so, does the record surrounding the NDAs, including the absence of any arbitration
 6 clause therein and the presence of a clear forum selection clause, warrant a determination that the
 7 parties did not agree to arbitrate disputes relating to treatment of Tesla's confidential information?

8 **II. COUNTER-STATEMENT OF FACTS**

9 **A. Tesla and Its Proprietary Dry Battery Electrode ("DBE") Process**

10 Tesla is the world's innovation and manufacturing leader for sustainable energy production,
 11 storage, and automotive technologies. Dkt. 1 ¶ 11. This case relates to a crucial aspect of Tesla's
 12 business: its industry-leading battery technology. Specifically, this case concerns Tesla's
 13 proprietary "dry-electrode" (sometimes called "DBE," or "dry battery electrode") process for
 14 manufacturing the electrodes used in lithium-ion battery cells. *Id.* ¶ 12. This path-breaking
 15 innovation is already reducing cost, energy consumption, and production cycle time for Tesla's
 16 manufacturing lines. *Id.* This includes at Tesla's Austin factory, which recently manufactured its
 17 **fifty millionth** lithium-ion cell using Tesla's DBE process. *Id.*

18 **B. Matthews: Manufacturer of Custom Equipment Designed with and For Tesla**

19 Like any large manufacturer, Tesla relies on trusted suppliers to supply "pilot" (i.e., pre-
 20 mass-production) and assembly line machinery suiting Tesla's requirements, which Tesla deploys
 21 as needed. *Id.* ¶ 13. In 2019, Tesla selected Matthews to be one of its suppliers for equipment that
 22 Tesla used to refine its dry-electrode battery manufacturing and to put it into mass-production. *Id.*

23 Contrary to the Motion's allegations, Matthews is not a DBE "pioneer." *See* Eggleston Decl.
 24 ¶¶ 3–13. The attached declaration from Tesla's Senior Director of 4680 Dr. Bonne Eggleston
 25 explains why.² *Id.* In brief, Matthews' history as a high-technology company is recent. Its largest
 26 and oldest business segment makes and sells caskets, gravesite memorials, and cremation

28 2 "4680" is the battery cell Tesla makes using DBE technology. Eggleston Decl. ¶ 1.

1 equipment. *Id.* ¶ 5. Matthews’ “Industrial Technologies” business segment has historically been
 2 its smallest by revenue. *Id.* The majority of Matthews’ activities relevant to this dispute are through
 3 its German subsidiary Saueressig, which Matthews acquired in 2011. Dkt. 17-5 ¶ 9.

4 The primary DBE experience that Saueressig (and by extension Matthews) has is in
 5 providing custom equipment for Tesla’s DBE process. Eggleston Decl. ¶ 8. [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 [REDACTED] Nothing about Tesla’s relationship with Matthews transformed it from a maker of
 9 custom machinery for others into an independent “pioneer,” as the Motion claims.

10 Before its relationship with Tesla, Matthews’ only substantive “dry-electrode” experience
 11 was providing custom equipment to a company called Maxwell Technologies, Inc. for a different
 12 energy storage device, ultracapacitors. *Id.* ¶ 5. **Maxwell**—not Matthews—performed
 13 groundbreaking DBE research, and in 2019 Maxwell became part of Tesla. *Id.* ¶ 4. As part of that
 14 acquisition, [REDACTED]. *Id.* ¶ 8. While Tesla
 15 saw value in Matthews’ abilities regarding the manufacture of custom machinery, it decidedly did
 16 **not** view Matthews as any sort of DBE pioneer. *Id.* ¶ 6. As Dr. Eggleston’s declaration explains,
 17 “Matthews’ expertise is in receiving designs and ideas from others and providing custom machinery
 18 to suit.” *Id.*

19 The Motion’s contrary allegations are unsupported, inaccurate, or both. The Motion claims
 20 for Matthews the mantle of DBE “pioneer” (Mot. 4) but nothing in the record—and, notably, nothing
 21 in the Declaration of Matthews’ CTO Mr. Babe—supports that claim.³ While Mr. Babe claims a
 22 “decade of experience” in DBE (Dkt. 17-5 ¶ 11), even he does not go so far as to call Matthews a
 23 “pioneer” in that space. Nor could he, [REDACTED], Matthews
 24 has ***never independently developed DBE technology.*** Eggleston Decl. ¶¶ 6–7. There is also no
 25 support in the record (and none in Mr. Babe’s declaration) for the Motion’s statement that Matthews
 26

27 ³ The unsworn statements in [REDACTED] are not
 28 contrary for the reasons in Dr. Eggleston’s declaration.

1 has made “production lines” for dry electrodes for nickel batteries or ultracapacitors in the past.
 2 *Compare Mot. 5, with Eggleston Decl. ¶13.* Nor is there any support for the Motion’s claim that
 3 Matthews designed calenders (e.g., industrial roller machines) for other unnamed customers’ “dry
 4 battery process lines.” *Compare Mot. 5, with Eggleston Decl. ¶13.*

5 Because Tesla’s DBE technology was highly proprietary and unprecedented in the industry,
 6 it was important to Tesla that Matthews hold information related to this technology in the strictest
 7 confidence. Dkt. 1 ¶ 14. To that end, Tesla and Matthews entered into two non-disclosure
 8 agreements (“NDAs”) on April 1, 2019 and July 1, 2019, to govern information sharing between
 9 the parties as they discussed a potential business relationship.⁴ *See* Dkts. 6-3, 6-4; *see also*
 10 Eggleston Decl. ¶ 9. The NDAs establish a detailed and robust confidentiality regime. They oblige
 11 Matthews to protect Tesla’s confidential and proprietary information and not disclose that
 12 information to those not authorized to receive it, or to use it in any manner not authorized by Tesla.
 13 *E.g.*, Dkt. 6-3 ¶ 2. Each NDA includes a forum selection clause confirming that California courts
 14 have exclusive jurisdiction over any disputes thereunder. *Id.* ¶ 12 (“The exclusive venue for any
 15 judicial action arising out of or relating to this NDA will be the state, federal, or regional courts for
 16 [Santa Clara County, California]. The parties . . . hereby waive any challenge to venue and
 17 jurisdiction in such courts.”).

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 _____

25 ⁴ [REDACTED]

26 [REDACTED]

27 ⁵ [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 C. Matthews' Gross Mishandling of Tesla's Valuable Confidential Information

15 As the Original Complaint explains, Tesla trusted Matthews with highly confidential
16 information regarding its proprietary DBE process. Dkt. 1 ¶¶ 14, 70. Matthews betrayed that trust.
17 It misappropriated Tesla's valuable confidential technology and undertook numerous improper acts.
18 *Id.* ¶ 15. The Complaint describes two basic categories of misconduct.

19 The first category comprises Matthews' improper, unjustified, and unlawful filing of patent
20 applications based, without authorization, on Tesla's valuable and confidential technology. *Id.* In
21 so doing, Matthews attempted to claim for itself ownership of Tesla's confidential and valuable
22 technology. *Id.* More, Matthews' misconduct has in some cases led to the publication of
23 confidential and valuable Tesla technology. *Id.* The second category comprises Matthews'
24 improper disclosure and use of Tesla's valuable and confidential technology to and for other
25 companies, including Tesla's competitors. *Id.* ¶ 16. Without notice or authorization, Matthews

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28

1 attempted to sell and in some cases sold DBE manufacturing equipment embodying Tesla's
 2 confidential trade secrets to Tesla's competitors.⁶ *Id.*

3 To recover the enormous damage wrought by Matthews' misconduct, and to pursue the other
 4 relief identified in the Original Complaint, Tesla brought this case.

5 **III. LEGAL STANDARD**

6 District courts in the Ninth Circuit review a motion to compel arbitration under "a standard
 7 similar to the summary judgment standard of [Federal Rule of Civil Procedure] 56." *Tabas v.*
 8 *MoviePass, Inc.*, 401 F. Supp. 3d 928, 936 (N.D. Cal. 2019) (Ryu, USMJ) (alteration in original);
 9 *Hansen v. LMB Mortg. Servs., Inc.*, 1 F.4th 667, 670 (9th Cir. 2021). Matthews, "as the party
 10 seeking to compel arbitration, has the burden of proving the existence of an agreement to arbitrate
 11 by a preponderance of the evidence." *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir.
 12 2014). The presumption of arbitrability "does not apply to disputes concerning whether an
 13 agreement to arbitrate has been made." *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 743
 14 (9th Cir. 2014). Where, as here, the parties executed two contracts, one calling for arbitration and
 15 one not, the district court must determine "which contract controls" for purposes of determining the
 16 forum for the claims being presented. *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 1190 (2024).

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22 ⁶ Matthews' contention that the Original Complaint "fails to identify one Tesla 'confidential trade
 23 secret' that was included in a patent filing or that Tesla otherwise disclosed to Matthews" (Mot. 10)
 24 is both inaccurate and off point. The Original Complaint plausibly alleges every element of each
 25 claim presented therein. There is no requirement that a complaint describe all (or any) trade secrets
 26 or other valuable confidential information underlying the claims. *Meggitt San Juan Capistrano,*
 27 *Inc. v. Yongzhong*, 575 F. App'x 801, 803 (9th Cir. 2014) (rejecting contention that a plaintiff must
 28 "identif[y] the particular trade secrets *at the pleading stage*").

1 **IV. ARGUMENT**2 **A. The Court Should Deny Matthews' Motion Because the Parties Unambiguously
3 Agreed That Disputes Regarding Treatment of Confidential Information Must Be
4 Litigated in the Courts of Santa Clara County, California**

5 As discussed above, the Original Complaint presents tort and contract claims relating to
 6 Matthews' flagrant misuse of Tesla-confidential information. Each claim rests on the contracts that
 7 establish Matthews' obligations for handling Tesla-confidential information, i.e., the three NDAs
 8 the parties executed between 2019 and 2022. Every one of those contracts unambiguously confirms
 9 that disputes arising from Matthews' misuse of Tesla-confidential information (e.g., the claims in
 10 Tesla's Original Complaint) shall be addressed by the "state, federal, or regional courts" of Santa
 11 Clara County, California. *E.g.*, Dkt. 6-3 ¶ 12. The NDAs have [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] The record could not be
 22 clearer that for confidentiality disputes, Tesla has no duty to arbitrate.

23 As this brief explains, Matthews' understanding of how the NDAs and [REDACTED] interact is
 24 seriously flawed. The contract language, on the other hand, is clear. The NDAs unambiguously
 25 identify this Court as an appropriate forum for disputes concerning the handling of Tesla's valuable
 26 confidential information. [REDACTED]

27 [REDACTED]

28 [REDACTED]

The Court should reject Matthews' contention that Tesla has a duty to arbitrate claims relating to Matthews' confidentiality breaches.

1. Where, As Here, There Are Multiple Agreements Between the Parties, the Court Must Determine Which Agreement Controls for Purposes of the Plaintiff's Claims Before Contemplating Compulsory Arbitration

Matthews' Motion commits a serious error when urging that analysis of the NDAs is a job for an arbitrator and not the Court. *E.g.*, Mot. 14. That statement is wholly incompatible with the Supreme Court's recent decision in *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186 (2024), which holds this issue is for the Court to decide. Remarkably, Matthews' Motion neither analyzes nor cites that decision, though it is precisely on point here. The Motion also fails to cite the Ninth Circuit's 2022 opinion in the same case, which the Supreme Court affirmed. *Suski v. Coinbase, Inc.*, 55 F.4th 1227 (9th Cir. 2022), *aff'd*, 144 S. Ct. 1186 (2024).

Coinbase presents highly similar facts and compels denial of Matthews' motion. Like this case, *Coinbase* involved multiple agreements between the parties: a user agreement that had a "delegation provision" requiring arbitration of disputes, and a set of sweepstakes rules with a "forum selection clause" directing disputes to courts in California. 144 S. Ct. at 1191. Upon being sued on sweepstakes-related claims, *Coinbase* moved to compel arbitration based on the user agreement. *Id.* at 1192. Like Matthews, *Coinbase* urged that plaintiffs' arguments opposing arbitrability should be weighed by an arbitrator, and not by the district court. *Id.* The district court, the Ninth Circuit, and the Supreme Court all rejected *Coinbase*'s argument. *Id.* The Supreme Court's unanimous opinion explains (contrary to Matthews' proposal) that in such a situation it is the court's duty to determine *in the first instance* which contract "controls" for purposes of assessing whether an agreement to arbitrate the pleaded claims exists:

Arbitration is a matter of contract and consent, and we have long held that disputes are subject to arbitration if, and only if, the parties actually agreed to arbitrate those disputes. Here, then, before either the delegation provision or the forum selection clause can be enforced, *a court needs to decide what the parties have agreed to—i.e., which contract controls.*

Id. at 1191 (emphasis added).

1 *Coinbase*'s analysis is critical to resolving Matthews' Motion. *Coinbase* confirms that the
2 first step is for the Court to determine which of the parties' agreements—the NDAs or [REDACTED]
3 “controls” the forum determination for the Original Complaint's claims. *Id.* at 1193 (“When we
4 home in on the conflict between the [two contracts] . . . the question is whether the parties agreed to
5 send the given dispute to arbitration—and, per usual, *that* question must be answered by a court.”).
6 Tesla is entitled to judicial resolution of that necessary first step, and Matthews (which failed to
7 consider or mention *Coinbase*) is wrong when it suggests that Tesla may be forced into arbitration
8 on that point. Matthews' Motion skips this first step altogether, instead jumping right into the
9 question of whether [REDACTED]. Mot. 13. But the
10 Court need only reach that subsidiary question if it concludes [REDACTED] rather than the NDAs,
11 “control” forum selection. As discussed below, they do not.

**2. The Record Overwhelmingly Demonstrates That the NDAs “Control”
for Purposes of Determining Whether a Duty to Arbitrate Exists**

The Supreme Court has confirmed that if there are multiple agreements between parties, then before a court determines whether an agreement to arbitrate exists, it must first determine which agreement “controls” for purposes of that case. *Coinbase*, 144 S. Ct. at 1193. This framing makes sense because if the NDAs “control”—which they do—then their forum selection clause must be enforced. *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 742–43 (9th Cir. 2014). Because such an inquiry relates to the existence of an arbitration agreement (and not the scope thereof), there is no presumption of arbitrability. *Id.* Where, as here, the existence of an arbitration agreement is at issue, the court “use[s] general state-law principles of contract interpretation to decide whether a contractual obligation to arbitrate exists.” *Johnson v. Walmart Inc.*, 57 F.4th 677, 681 (9th Cir. 2023). Here, California law applies. See Dkt. 6-3 ¶ 12. In California, “[a] contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting.” Cal. Civ. Code § 1636. The contract must be interpreted as a whole. Cal. Civ. Code § 1641; see also *Int’l Bhd. of Teamsters v. NASA Servs., Inc.*, 957 F.3d 1038, 1042–44 (9th Cir. 2020) (applying California contract law).

1 Here, the record overwhelmingly indicates that the NDAs—not [REDACTED] must control
2 any inquiry into whether the parties agreed to arbitrate the trade secret, unfair competition, and
3 breach-of-NDA claims in the Original Complaint. This is for two overlapping reasons. First, the
4 basic structure of the NDAs and of [REDACTED] confirms the parties' express bargain that
5 confidentiality disputes would be judicially resolved by this Court or by others in Santa Clara
6 County. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 As discussed above, Tesla and Matthews entered the first two NDAs in early and mid-2019;
2 the third was signed March 14, 2022. *See* Dkts. 6-3, 6-4, 6-5. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] the
7 types of damages that are typically associated with trade secret misappropriation and breach of
8 confidentiality obligations. The logical conclusion from this approach is *not* the parties agreed that
9 Matthews could steal, use, and publish Tesla's confidential technical information with impunity,
10 and that would be nonsensical for Tesla to have conceded. Rather, the logical conclusion is that
11 those claims are governed by the contracts that set forth the confidentiality obligations and trade
12 secret duties themselves: the NDAs.

13 In such circumstances, it is beyond serious question that the dispute presented by Tesla's
14 Original Complaint arises from the NDAs, and not [REDACTED]. Recent authority from the Ninth
15 Circuit confirms it.

16 In *Johnson v. Walmart Inc.*, a customer entered into multiple agreements with Walmart: a
17 "Terms of Use" agreement accompanying a tire purchase that included an arbitration provision, and
18 a tire-service agreement. 57 F.4th 677, 679–80 (9th Cir. 2023). Under California law, the Ninth
19 Circuit found no agreement to arbitrate disputes over the tire-service agreement. *Id.* at 682. The
20 court reasoned the arbitration clause in the "Terms of Use" did not apply to claims under the
21 "separate, independent" tire-service agreement, even though the two contracts "involve[d] the same
22 parties and the same tires." *Id.* at 682–83. The court laid out three considerations confirming its
23 holding, all of which are applicable here.

24 First, the service agreement was separately entered into and negotiated from the tire
25 purchase. *Id.* at 683. Just so here, where Matthews bound itself to the NDAs separately, and for
26 separate reasons, from [REDACTED]. Second, in *Johnson* the two contracts involved separate
27 consideration. *Id.* Again, just so here, where the NDA consideration was access to Tesla's
28 information, while [REDACTED]

1 [REDACTED]. Third, in *Johnson* the customer's claim "depend[ed] exclusively on the terms of the Service
2 Agreement," and no part of that claim's proof concerned the tire purchase. *Id.* That is precisely the
3 case here. Nothing in Tesla's Original Complaint depends, in any way, on Matthews' conduct
4 [REDACTED] The Original Complaint solely rests on Matthews' breach of the NDAs. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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26 [REDACTED]
27 [REDACTED]
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1 For these reasons, the Court should determine that, by the basic terms of the NDAs and
 2 [REDACTED] and of Tesla's Original Complaint, the NDAs are the controlling contract for the purpose of
 3 resolving Matthews' Motion.

4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]

16 [REDACTED], the record is unambiguous that in 2022 Tesla and
 17 Matthews confirmed, in writing, that disputes regarding confidentiality should be directed to the
 18 courts of Santa Clara County. The Ninth Circuit has confirmed that such a writing may supersede
 19 a prior arbitration agreement. *Goldman, Sachs & Co.*, 747 F.3d at 741; *see also Suski*, 55 F.4th at
 20 1231 (holding that “[b]y including the forum selection clause, . . . the [second agreement] evince[s]
 21 the parties’ intent not to be governed by the [prior agreement]’s arbitration clause when addressing
 22 controversies concerning the sweepstakes”). [REDACTED]

23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

26 The Ninth Circuit has confirmed that in California, “[t]he general rule is that when parties
 27 enter into a second contract dealing with the same subject matter as their first contract without stating
 28 whether the second contract operates to discharge or substitute for the first contract, the two

1 contracts must be interpreted together and the latter contract prevails to the extent they are
 2 inconsistent.” *Suski*, 55 F.4th at 1230 (alteration in original) (quoting *Capili v. Finish Line, Inc.*,
 3 116 F. Supp. 3d 1000, 1004 n.1 (N.D. Cal. 2015)). California’s state courts have so held for more
 4 than a century. *E.g., San Diego Constr. Co. v. Mannix*, 166 P. 325, 326 (Cal. 1917) (“[T]he later
 5 [contract] supersed[es] the earlier one wherever it is inconsistent therewith.”); *Frangipani v.
 6 Boecker*, 75 Cal. Rptr. 2d 407, 409 (Cal. Ct. App. 1998) (“Where there is an inconsistency between
 7 two agreements both of which are executed by all of the parties, the later contract supersedes the
 8 former.”); *see also* 1 *Witkin’s Summary of California Law* § 770 (11th ed. 2024) (collecting
 9 authority).

10 That is the situation here. [REDACTED]

11 [REDACTED]
 12 [REDACTED] This is yet another reason why the Court should determine that the 2022 NDA
 13 is the “operative contract” for purposes of Matthews’ Motion.

14 [REDACTED]
 15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] Matthews’ argument elevates form over function.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED] [REDACTED] [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED] [REDACTED]
 7 [REDACTED] [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 **d. Matthews' Cited Authority Is Not Contrary**

12 As already noted, Matthews' Motion inexplicably fails to address *Coinbase*, notwithstanding
 13 its direct implications for the current dispute. But even setting that omission aside, the authority
 14 Matthews does cite is not contrary. Matthews' discussion of the NDAs (Mot. 14–15) principally
 15 relies on *McEnery v. McEnery*, 621 F. Supp. 3d 1059 (N.D. Cal. 2022) (Gilliam, USDJ), but while
 16 that case involved multiple agreements, both contained arbitration clauses. 621 F. Supp. 3d at 1063.
 17 *McEnery* was thus sharply distinct from the present case, in which the NDAs—the agreement
 18 addressing conduct directly on point for the claims being presented—[REDACTED]

19 [REDACTED]
 20 Matthews' other citations generally relate to interpretation of arbitration clauses, and so are
 21 off point. *E.g., Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, 97 F.4th 1190 (9th Cir. 2024) (discussing
 22 an arbitration clause's delegation of unconscionability challenges); *Patrick v. Running Warehouse,*
 23 *LLC*, 93 F.4th 468 (9th Cir. 2024) (discussing an arbitration clause's incorporation of rules);
 24 *Brennan v. Opus Bank*, 796 F.3d 1125 (9th Cir. 2015) (interpreting arbitration clause); *Knutson v.*
 25 *Sirius XM Radio Inc.*, 771 F.3d 559 (9th Cir. 2014) (interpreting arbitration clause). Such authority
 26 has no impact here for the simple reason that the NDAs [REDACTED] instead
 27 select this Court as a forum for disputes regarding mishandling of confidential information. [REDACTED]

28 [REDACTED]

1 [REDACTED] Under *Coinbase*, that approach is wrong because (for the
 2 reasons discussed) the NDAs, not [REDACTED], are the controlling contract.

3. **Because the NDAs Control and Require This Court or Others in Santa
 4 Clara County to Resolve Disputes Thereunder, the Court Should Deny
 5 Matthews' Motion to Compel Arbitration**

6 For the reasons discussed above, the NDAs are the operative contract for purposes of
 7 determining whether a duty to arbitrate exists. It is clear no such duty exists under the NDAs. [REDACTED]

8 [REDACTED] The NDAs instead require any dispute “arising out of or
 9 relating to this NDA” be brought in the courts of Santa Clara County, California. Dkt. 6-5 ¶ 12. In
 10 other words, there exists no valid agreement to arbitrate Tesla’s claims relating to the NDAs and
 11 confidentiality obligations. Courts can refer a dispute (including the question of arbitrability) to an
 12 arbitrator only if a valid arbitration agreement exists. *Henry Schein, Inc. v. Archer & White Sales,*
 13 *Inc.*, 586 U.S. 63, 70 (2019) (citing 9 U.S.C. § 2); *see also First Options of Chicago, Inc. v. Kaplan*,
 14 514 U.S. 938, 945 (1995) (“[A] party can be forced to arbitrate only those issues it specifically has
 15 agreed to submit to arbitration.”). As there exists no valid agreement to arbitrate the present dispute,
 16 the Court should deny Matthews’ Motion.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 **V. CONCLUSION**

11 For the reasons above, Tesla respectfully asks that the Court deny Matthews' motion and
12 confirm that Tesla has no arbitration obligation for any claims in the Original Complaint.

14 Dated: July 9, 2024

FISH & RICHARDSON P.C.

15 By: /s/ Robert Courtney
16 Robert Courtney

17 Attorney for Plaintiff,
18 TESLA, INC.

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